

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH " F: NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3662/Del/2013  
(Assessment Year: 2009-10)

Rajeev Jain, M-1/12, Vallabh Vihar, Sector-13, Rohini, New Delhi PAN: AAGPJ3196C	Vs.	ITO, Ward-21(4), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ved Jain, Adv Shri Ashish Chadha, CA Shri Kislaya Parashar, Adv
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	11/10/2018
Date of pronouncement	07/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-XXII, New Delhi dated 03.01.2013 for the Assessment Year 2009-10, wherein, effectively three grounds of appeal are raised as under:-
  - "1. That on the facts and in the circumstances of the petitioner's case the learned Commissioner of Income-tax (Appeals) was wrong in upholding the action of the Assessing Officer in making an addition of Rs. 33,92,703/- as undisclosed payments towards credit cards.
  2. That on the facts and in the circumstances of the petitioner's case the learned Commissioner of Income-tax (Appeals) was wrong in upholding the addition of Rs. 3,18,925/- made by the Assessing Officer under the head 'short term capital gain'.
  3. That on the facts and in the circumstances of the petitioner's case, the learned Commissioner of Income-tax (Appeals) was wrong in upholding the addition of Rs. 2,58,472/- made by the Assessing Officer, for alleged payments to multiplex capital Limited.
  4. That on the facts and in the circumstances of the petitioner's case, the learned Commissioner of Income-tax (Appeals) was wrong in upholding the action of the Assessing Officer in charging interest of Rs. 5,28,695/- under section 234A and 234B of the Income Tax Act, 1961."

2. Brief facts of the case shows that the assessee is an individual, derived its income from salary, business and other sources. The assessee is also engaged in trading of shares. The assessee filed its return of income on 31.03.2010 declaring total income of Rs. 154473/-. The assessment u/s 143(3) of the Act was passed on 31.03.2010 declaring total income of Rs. 41,24,573/-. The assessment u/s 143(3) of the Act was passed on 26.12.2011 where three additions were made (i) additions of Rs. 3392703/- as undisclosed payment towards various credit cards; (ii) short term capital gain of Rs. 318925/-; (iii) undisclosed payment to M/s. Multiplex Capital Ltd of Rs. 258472/-. The assessee preferred an appeal before the Id CIT(A), who dismissed the appeal of the assessee vide order dated 31.01.2013 and therefore, aggrieved assessee has preferred this appeal before us.
3. The ground No. 1 relates to the confirmation of the addition of Rs. 3392703/- as undisclosed payment towards various credit cards. During the assessment proceedings the assessee has made payment towards credit cards and was asked to furnish the source thereof. Assessee submitted that these are bank transfer from one credit card to another credit card. Ld AO rejected the same and made the above additions. The Id CIT(A) also noted the fact at para 8 of his order and confirmed the above additions as under:-

*“8.1 During the course of appellate proceedings, Ms. Meenakshi Jain, CA, the Ld. Counsel of the Appellant attended on 08.10.12 and filed the first paper book dated 08.10.12 in which details of 10 Credit Cards from 7 organizations were filed. Among others, the following queries were made on the Order Sheet dated 08.10.12 :-*

*“3. To specify the Credit Cards and Bank A/cs held by the Assessee during the year and to explain the deposits in them.*

*4. Specify the investment mode for Shares and specify the Profit/Loss on Shares and also the Profit/Loss on Speculative Transactions.”*

*8.2 Sh. Sumnish Jain, CA, the other Counsel of the Appellant filed reply dated 29.10.12, which is reproduced above in Para 7.2. On 29.10.12 itself the following Order Sheet entry was made*

*“It was pointed out to the Ld. Counsel that the reply is incomplete.*

*To furnish full reply / documents and to justify the Grounds of Appeal with evidence.”*

8.3 Sh. Sumnish Jain, CA, the Ld. Counsel of the Appellant, on 28.12.12, filed the second paper book (dated 28.12.12). It was noticed that in this Paper Book a very large number of accounts of various Credit Cards from various organizations were filed which add upto a total of 41 Cards from 8 organizations. Comparing this tcy the details filed in the first Paper Book (dated 08.10.12) it was seen that in the first Paper Book details of only 10 Credit Cards from 7 organizations were filed. Perusal of the written Submissions dated 29.10.12 signed by the Appellant Sh. Rajeev Jain, show that the Appellant had admitted having bank accounts in\_5 Banks (Karur Visya Bank, Karnatka BankTHDf C Bank, RBS and AXIS Bank) and Credit Cards from 8 different organizations (ICICI Bank, RBS, Indslnd, Citi Bank, SB1 Tata, HDFC, HSBC and Std. Chartered Bank). It was noticed that the second Paper Book (dated 28.12.12) claimed to have filed statements of 41 Cards from 8 organizations and 4 Bank Accounts from 3 Bank (Axis Bank, Karnatka Bank and Karur Visya Bank). Thus it is seen that even the second Paper Book did not give the complete details of all the bank accounts, as against accounts in 5 Banks admitted by the Appellant vide his letter dated 29.10.12, the second Paper Book (dated 28.12.12) gave the details of bank accounts from only 3 Banks, leaving out the bank accounts from 2 Banks. Further, it is also seen that even the second Paper Book did not give the complete details of all the Credit Cards, as against Credit Cards from 8 organizations admitted by the Appellant vide his letter dated 29.10.12, the second Paper Book (dated 28.12.12) gave the details of Credit Cards from only 7 of those 8 organizations mentioned, leaving out the Credit Cards from “Indslnd”, which was mentioned in point no. 5| of the Submissions dated 29.10.12 as one of the organizations from which Credit Cards were held by the Appellant. Thus the second Paper Book did not give the complete details of all the Credit Cards also. However, it was noticed that the Second Paper Book gave the details of Credit Cards from “Deutsche”, though this was not mentioned in the written Submissions dated 29.10.12 filed by the Appellant. Thus even the written Submissions dated 29.10.12 did not give the complete picture and the full details of all the Credit Cards or even all the organizations from which the Assessee had Credit/ Cards.

8.4 In view of the above situation, the Ld. Counsel of the Appellant was made aware of the situation that the Appellant has not come out with the full details and is even now concealing the full details and even the exact number of Credit Cards held by the Assessee. The Ld. Counsel of the Appellant admitted that in addition to the Credit Cards mentioned the Appellant has 2 or 3 more Credit Cards whose details have not been given. The following entry was made in the Order Sheet on 28.12.12

*“The Ld. Counsel has stated that all the evidence was already produced before the AO and there is no new evidence. The Ld. Counsel has stated that in addition to the Cards shown on page 1 & 2 of Paper*

*Book dated 28.12.12 there are 2 or 3 more Credit Cards of the Appellant in which there are transaction of Rs.2 to 3 lakhs only.”*

8.5 Thus it is seen that even after getting several opportunities the Appellant has not come out with the truth and has continued his evasive tactics and though the details of 41 Credit Cards have been submitted whose list appears on page 1 and 2 of the second Paper Book (dated 28.12.12) there are still 2 or 3 more Credit Cards as admitted by the Ld. Counsel of the Appellant on 28.12.12.

8.6 A comparison of the details given in the first Paper Book (dated 08.10.12, second Paper Book (dated 28.12.12) and the Submissions dated 29.10.12 show that the Assessee has claimed having Credit Cards from the following organizations:-

S.No.	First Paper Book (dt. 08.10.12)	Submissions dated 29.10.12	Second Paper Book (dt. 28.12.12)
1.	Citi Bank- 2 Cards	Citi Bank	Citi Bank- 2 Cards
2.	ICICI- 2 Cards	ICICI	ICICI - 3 Cards
3.	RBS - 2 Cards	RBS	RBS - 3 Cards
4.	Deutsche - 1 Card		Deutsche - 1 Card
5.	HDFC- 1 Card	HDFC	HDFC- 2 Cards
6.	SBI Tata- 1 Card	SBI Tata	SBI Tata- 1 Card
7.	HSBC- 1 Card	HSBC	HSBC- 2 Cards
8.		SCB	SCB- 27 Cards
9.		IndsInd	
Total	7 Organizations, 10 Cards	8 Organizations, No. of Cards unspecified	8 Organizations, 41 Cards

8.7 Thus it is seen that the Appellant never came out with the truth and the exact number of Credit Cards and even the exact specification of the organizations from which the Credit Cards were obtained. Though both the Submissions dated 29.10.12 and the Second Paper Book (dated 28.12.12) mention the number of organizations from which Credit Cards were obtained as 8, but perusal of the above chart shows that these not the same and the Submissions dated 29.10.12 show that Credit Cards were obtained from “IndsInd” also, but no Credit Cards from this organizations is mentioned in the Second Paper Book (dated 28.12.12) which specifies 41 Credit Cards, but none from “IndsInd”. The First Paper Book also does not mention any Credit Card from “IndsInd” and also from SCB, and even for the organizations which are common between the First and the Second Paper Books, it is seen that the First Paper Book did not disclose all the Cards from that organizations. For instance, as against 3 Credit Cards shown from ICICI in the Second Paper Book, only 2 Credit Cards were shown in the First Paper Book. Also the number of Credit Cards from RBS, HDFC and HSBC were also shown at a suppressed number in the First Paper Book. Thus it is seen that

right from the beginning it was the attempt of the Appellant not to come out with the truth and to give only half truths and to suppress the information in an attempt to prevent the truth from coming out. Even in the Submissions dated 29.10.12 and the Second Paper Book (dated 28.12.12) the Appellant has not come out with the truth as is apparent from a perusal of the above chart. It has also been admitted by the Ld. Counsel that in addition to the Credit Cards details given the Appellant has 2 or 3 more Credit Cards. Though it has also been claimed by the Ld. Counsel that the transactions in these Credit Cards are of Rs.2 to 3 lakhs only, but the exact quantum of transactions and their accounting if any by the Appellant, the nature of transactions in those undisclosed Credit Cards and the source of funds in those Credit Cards can be examined only when the details and accounts are produced, which the Appellant evaded to do.

8.8 The position for bank accounts of the Appellant is also similar and as against the Appellant as per Submissions dated 29.10.12, claiming to have bank accounts in 5 different Banks (Karur Visya Bank, Karnatka Bank, HDFC Bank, RBS and AXIS Bank), the details from only 3 Banks being Karur Visya Bank, Karnatka Bank and Axis Bank were filed.

8.9 The Appellant has filed another Submissions dated 28.12.12 on

02.01.13 (reproduced above in Para 7.4) in which it has been claimed that "most of the payments were credit card transfers i.e. loan taken from one credit card and payment made to another credit card. I have already filed with you the photocopies of all credit cards,, I am also enclosing statement showing details of loans taken from one credit card and paid to other credit cards. You will kindly observe that all the payments made by me are from one card to another card or from my bank accounts. ".

8.10 It is seen that despite the Ld. Counsel of the Appellant admitting on 28.12.12 that there are 2 or 3 more Credit Cards, the Appellant rather than giving the details of those undisclosed Credit Cards has made the false claim that the photocopies of all the Credit Cards have already been filed. In fact, the details filed are not the exact photocopies of all the accounts and most of them are typed accounts. However, it is seen that on one hand, the Ld. Counsel admitted on 28.12.12 that there are 2 or 3 more Credit Cards whose details have not been given, and on the other hand. Submissions dated 28.12.12 are filed on 02.01.13 that copies of all the Credit Cards have been already given, which is a totally false claim.

8.11 Another false claim made in the above Submissions dated 28.12.12 filed on 02.01.13 is that all the payments are from one Card to another or from bank accounts. Perusal of the accounts filed with the Second Paper Book (dated 28.12.12) show that there are substantial Cash Deposits in some of these accounts. Some of the details of the Cash Deposits (which are obviously not complete as all the Credit Cards and bank accounts have not been given and most of the statements filed with the Second Paper Book are documents typed out by the Appellant himself) seen from these accounts are as under:-

S.No.	PB page no.	Account	Date	Cash Deposit
1.	19	Karur Vysya Bank Ltd. 4104155000018612	05.08.2008	Rs. 1,00,000/-
2.	19	Karur Vysya Bank Ltd. 4104155000018612	07.10.2008	Rs. 1,00,000/-
3.	19	Karur Vysya Bank Ltd. 4104155000018612	10.10.2008	Rs. 80,000/-
4.	20	Karur Vysya Bank Ltd. 4104155000023919	07.10.2008	Rs. 1,00,000/-
5.	20	Karur Vysya Bank Ltd. 4104155000023919	10.10.2008	Rs. 1,00,000/-
6.	21	HDFC Bank 02721000041275	05.05.2008	Rs. 20,000/-
7.	21	HDFC Bank 02721000041275	23.05.2008	Rs. 45,000/-
8.	22	HTDFC Bank 02721000041275	09.09.2008	Rs. 30,000/-
9.	22	HDFC Bank 02721000041275	16.09.2008	Rs. 1,50,000/-
10.	22	HDFC Bank 02721000041275	08.10.2008	Rs. 50,000/-
11.	22	HDFC Bank 02721000041275	10.12.2008	Rs. 10,000/-
12.	23	HDFC Bank 02721000041275	08.03.2009	Rs. 20,000/-
13.	24	Karnatka Bank 5492500100086801	21.08.2008	Rs. 13,500/-
			Total	Rs.8,18,500/-

8.12 Thus it is seen that even in the incomplete accounts given by the Appellant an amount of Rs.8,18,500/- deposited in cash has been noticed during the appellate proceedings for which no details or explanation has been given and the Appellant claims that the payments were from one Credit Card to another. It is also seen that there are other significant transactions (other than cash) for which no details or explanations have been given. For instance in the Axis Bank Account No. 371010100006743 appearing on page 26 of the Second Paper Book (dated 28.12.12), there is a credit entry of Rs.5,00,000/- on 13.06.2008 by cheque no. 535827, in which the particulars are mentioned as "BY CLG/ZN MICROUT/SET 78". It has not been explained how and from where this large credit has been received by the Appellant. This entry of Rs.5,00,000/- is neither part of the salary nor any other disclosed sources or from any other bank account or Credit Card of the Assessee. It is obvious that this represents a receipt which may be from the Share Trading of the Appellant or from some other undisclosed sources. It is clear that the Assessee was having a very large number of Credit Cards from

*a large number of organizations and also a large number of bank accounts from several Banks, has substantial unaccounted transactions and in an attempt to evade coming out with the truth so as to evade paying the due taxes, the Assessee sought to give incomplete information and incomplete documents and made false claims as discussed above.*

*8.13 In view of the undisclosed cash deposits of Rs.8,18,500/- noticed from the above bank accounts, an addition for the same should be made to the total income of the Assessee, and an enhancement of this amount to the income should be made. Also in view of the undisclosed credit entry of Rs.5,00,000/- appearing in the abovementioned Axis Bank Account, an addition for the same should be made and in enhancement of this amount of Rs.5,00,000/- should also be made. It is also seen that there are several other smaller unaccounted transactions in the bank accounts and Credit Cards accounts. It is also seen that these are still incomplete, as the copies and details of all the bank accounts and all the Credit Cards Accounts have not been filed by the Assessee. However, in view of the addition of Rs.33,92,703/- made by the Assessing Officer towards unaccounted payments involving Credit Cards, this addition of Rs. 13,18,500/- (Rs.8,18,500/- + Rs.5,00,000/-) is telescoped in the addition of Rs.33,92,703/- and separate addition of Rs. 13,18,500/- is not being made.*

*8.14 In view of the above discussion, including the giving of incomplete details and information by the Appellant and making of false claims, no relief can be given to the Appellant on the issue of addition of Rs.33,92,703/- made by the Assessing Officer for payments involving Credit Cards (which include the unaccounted cash deposits of Rs.8,18,500/- and also the unaccounted credit of Rs.5,00,000/- in the bank accounts), which is hereby confirmed.”*

4. The Id AR submitted that the Id CIT(A) has confirmed the addition for the reason that the assessee has provided incomplete details and the claim made by the assessee is false. The Id AR stated that the assessee is having 41 credit cards and the details of these cards have been provided to the Id AO and most of the transaction are credit card transfer. He, therefore, submitted that the source of the transaction is the balance transfer facility availed from another credit card. As it is not income such addition cannot be made.
5. The Id DR vehemently submitted that the assessee has failed to furnish the complete details and therefore, the addition has been made.
6. In rejoinder the Id AR vehemently referred to various pages of the paper book, wherein, at page 1 and 2 he has given the details of loan from one

credit card to another credit card. He submitted that these details have not been verified by the Id AO and hence, addition is not proper.

7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The fact shows that assessee is having 41 credit cards with various banks. The assessee has debited Rs. 3392703/- in the various credit cards towards outstanding amount. As per the details furnished at page 1 and 2 of the paper book, it is evident that deposit in one credit card is repaid by withdrawal from another credit card. Naturally, if the assessee has availed credit facilities in one credit card account to repay the other outstanding, it does not necessary lead to the additions merely because of the fact that the assessee is holding very large number of credit cards. Further the Id CIT(A) has also made the observations in para 8.13 about cash deposit in the bank accounts. The assessee was neither asked to show the source of the cash deposit and there is no mention of any notice issued by the Id CIT(A) for enhancement. In any case, as the lower authorities have not verified the whole transaction cycle carried out by the assessee of withdrawing from one credit card and depositing it in the second credit card, we set aside the whole matter back to the file of the Id AO with a direction to the assessee to substantiate the inter credit card transaction and also the deposit of cash in various bank accounts. The Id AO may verify the same and examine the whole issue afresh. Accordingly, ground No. 1 of the appeal is set aside to the file of the Id AO with above direction.
8. Ground NO. 2 of the appeal is with relation to the addition of Rs. 318925/- based on the information received from M/s. Multiplex Capital Ltd u/s 133(6) of the Act. The Id CIT(A) also confirmed the same.
9. The Id AR submitted that the Id AO has only considered the transactions of sale and purchase of the shares but has ignored the opening and closing balance of securities. The assessee submitted that in fact the assessee has incurred loss of Rs. 146160/- during the year. He further referred to page No. 3 to 6 of the paper book, where the script wise



details are mentioned. He referred to page no. 7 to 14, where the copy of the account of the broker and details of transactions of purchase and sale of shares is mentioned. He therefore, submitted that no such profit has been earned by the assessee.

10. The Id DR supported the order of the lower authorities.
11. We have carefully considered the rival contentions and find that the assessee has submitted the details of the sale and purchase of the shares at page No. 3 to 14 of the paper book. The claim of the assessee is that he has incurred the loss of Rs. 146160/- in trading of shares and Rs. 43851/- for future and option trading. It is further stated that he has also earned profit of Rs. 20632/- from the jobbing activities. As while calculating the income, the opening and closing stock of securities have not been considered by the AO, respect to different account of transactions entered into by the assessee for future and option as well as of jobbing, further, the claim of the assessee that he has incurred loss of Rs. 146160/- in trading of shares, we set aside the whole issue back to the file of the Id AO with a direction to the assessee to demonstrate before the Id AO about the amount of the profit earned by the assessee or loss incurred by the assessee in various transaction. The Id AO may examine the same and decide the issue afresh. Accordingly, Ground No. 2 of the appeal is set aside to the file of the Id AO.
12. Ground No. 3 of the appeal is with respect to the addition of Rs. 258472/- on account of payment by the assessee to M/s. Multiplexes capital ltd. The assessee failed to show the source of payment to the broker and hence additions was made by the Id AO and confirmed by the Id CIT(A).
13. The Id AR submitted that these are the not the payment made by the assessee to the broker but payment made by the broker to the assessee. Hence, the addition is wrongly made.

14. The Id DR submitted that if that be the case then the assessee may be directed to prove before the Id AO that situation is contrary to what has been understood by the lower authorities.
15. We have carefully considered the rival contentions and the dispute here is that the revenue authorities have understood that the payment is made by the assessee to the broker but the assessee claimed that it is payment made by the broker to the assessee. The copy of the account at page No. 20 which is also ledger account from the books of broker shows that the above amount is credited to the account of the assessee. However, as the issue of profit or loss earned from the same broker is also set aside by us to the file of the Id AO vide ground No. 2 of the appeal, we also set aside this ground also the file of the Id AO for fresh verification. Accordingly, ground No. 3 of the appeal is set aside.
16. Ground No. 4 of the assessee is with respect to charging of interest u/s 234A and 234B which is consequential in nature and hence same is dismissed.
17. Accordingly, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 07/01/2019.

-Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:07/01/2019

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi